

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-08-29,302

In re: 301 G St., S.W.

Ward Six (6)

AMERICAN RENTAL MANAGEMENT COMPANY
Housing Provider/Appellant

v.

ARLENA CHANEY, et al
Tenant/Appellees

ORDER ON MOTION FOR RECONSIDERATION

May 22, 2014

RE-ISSUED ON JUNE 27, 2014*

McKOIN, COMMISSIONER. This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by the Office of Administrative Hearings (OAH), based on a petition filed with the Department of Consumer and Regulatory Affairs (DCRA), in the Rental Accommodations and Conversion Division (RACD), Office of Adjudication.¹ The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-

*The Decision and Order in this case has been re-issued by the Commission on June 27, 2014. The reason for the re-issuance is that the United States Post Office returned the original Decision and Order on June 25, 2014 to the Commission as undeliverable to Ms. Arlena Chaney (Tenant Petitioner). The original Decision and Order was timely mailed to Ms. Chaney but the address label contained an incorrect apartment number. The Commission is re-issuing the Decision and Order to all parties with the corrected mailing label for Ms. Chaney.

¹ OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (RACD) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE §§ 2-1831.01-1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of the RACD were transferred to DHCD by the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03(a) (2001 Supp. 2008).

10, D.C. OFFICIAL CODE §§ 42-3501.01 - 42-3509.07 (2001 Supp. 2008), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-2-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

I. PROCEDURAL HISTORY

Arlena Chaney (Tenant), residing at 301 G St., S.W. (Housing Accommodation), filed Tenant Petition RH-TP-08-29,302 (Petition) on May 16, 2008, against American Rental Management Company (Housing Provider), and named as additional Petitioners The New Capitol Park Towers Tenant Association (Association) and seventy-eight (78) other individuals, including thirteen (13) co-tenants, allegedly residing at the Housing Accommodation (collectively, Petitioners). On March 27, 2013, Administrative Law Judge Louis Burnet (ALJ) issued a Final Order in Arlene Chaney, et al v. Am. Rental Mgmt. Co., RH-TP-08-29,302 (OAH Mar. 27, 2013) (Final Order), and a Reconsideration Order on June 24, 2013.

On July 9, 2013, the Housing Provider filed a Notice of Appeal with the Commission. *See* Notice of Appeal at 2. On April 1, 2014, the Housing Provider filed a motion to voluntarily dismiss its appeal of the Final Order and Reconsideration Order in this case (Motion to Dismiss Appeal). *See* Motion to Dismiss Appeal at 1. Based on the request of the Housing Provider to withdraw its appeal and the fact that Petitioners would not be harmed by dismissing the appeal, and that the Petitioners had not filed, at that time, a notice of appeal or answer to the Housing Provider's Notice of Appeal, the Commission issued its Order Dismissing Appeal on May 8, 2014. *See* Order Dismissing Appeal at 1-7. On May 15, 2014 the Petitioners filed an Emergency Motion for Reconsideration of the Commission's Order to Dismiss Appeal dated

May 8, 2014, and to file late an Opposition to Appellant's Motion to Dismiss and Cross-Appeal.

On May 21, 2014, the Housing Provider, by counsel, filed a Motion to Strike Ms. Chaney's Emergency Motion, and a Memorandum of Points and Authorities in Support of Motion to Strike Ms. Chaney's Opposition to the Motion to Dismiss Appeal (Motion to Strike). The Housing Provider states in its Motion to Strike that Mr. Zouaoui is still the attorney of record for the Petitioners, Ms. Chaney cannot represent the Petitioners, the Petitioners cannot file an appeal at this time, and Ms. Chaney does not identify any reason why reconsideration is appropriate and the Housing Provider's Motion to Dismiss Appeal should be denied. Motion to Strike at 1-3.

II. DISCUSSION OF THE ISSUES

The Commission observes that the Petitioners have included the following requests in its Emergency Motion for Reconsideration of the Commission's Order to Dismiss Appeal: Leave to File Late Attached Opposition to Appellant's Motion to Dismiss (which was attached to the Emergency Motion for Reconsideration of the Commission's Order to Dismiss Appeal), Temporary Restraining Order Against Appellant and Leave to File Late a Cross Appeal.² The Commission will address each of these requests in this order.

²The Commission is aware of the central role *pro se* litigants play in the implementation of D.C. OFFICIAL CODE §§ 42-3501.01 -3509.07 (2001) and have considered that in its review of the Petitioners' *pro se* Emergency Motion for Reconsideration of the Commission's Order to Dismiss Appeal and Opposition to Appellant's Motion to Dismiss in this case. See Watkis v. Farmer, RH-TP-07-29,045 (RHC Aug. 15, 2013) at n.14 ("In addressing the Housing Provider's *pro se* Notice of Appeal, the Commission is mindful of the important role that *pro se* [sic] litigants play in the Act's enforcement.") See also, Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1298-99 (D.C. 1990); Cohen v. D.C. Rental Hous. Comm'n, 496 A.2d 603, 605 (D.C. 1985); Barnes-Mosaid v. Zalco Realty, Inc., RH-TP-08-29,316 (RHC Sept. 28, 2012); Chen v. Moy, RH-TP-08-29,340 (RHC Mar. 27, 2012); Levy v. Carmel Partners, Inc., RH-TP-06-28,830; RH-TP-06-28,835 (RHC Mar. 19, 2012). The Commission has long recognized that *pro se* litigants can face considerable challenges in prosecuting their claims without legal assistance. See Levy, RH-TP-06-28,830; RH-TP-06-28,835 (citing Kissi v. Hardesty, 3 A.3d 1125, 1131 (D.C. 2010)). Especially in cases involving remedial statutes like the Act, courts and administrative agencies have been more disposed "to grant leeway to" *pro se* litigants. See Barnes-Mosaid, RH-TP-08-29,316; Chen, RH-TP-08-29,340; Levy, RH-TP-06-28,830; RH-TP-06-28,835. However, the District of Columbia Court of Appeals (DCCA) and the Commission have been clear that "the court may not act as counsel for either litigant." See *id.*

Under 14 DCMR § 3823.1 (2004), an adversely affected party of a Commission order may file a motion for reconsideration within 10 days of receipt of the decision.³ On May 8, 2014, the Commission issued its Order Dismissing Appeal in this the case, RH-TP-08-29,302. On May 15, 2014, the Petitioners filed a timely Emergency Motion for Reconsideration of the Commission's Order to Dismiss Appeal (Emergency Motion). *See* 14 DCMR § 3823.1. Under 14 DCMR § 3823.2 (2004), a motion for reconsideration "shall set forth the specific grounds on which the applicant considers the decision and order to be erroneous or unlawful." *See* Byrd v. Reaves, TP 26,195 (RHC Aug. 8, 2002) (tenant did not specifically identify an error or unlawful basis upon which the Commission made its decision as required by 14 DCMR § 3823.2); Dorchester House, Assocs., LLC v. Tenants of 2480 16th Street, NW, RH-SF-09-20,098 (RHC Jan. 3, 2014) (noting that, under the Commission's rules, a motion for reconsideration "[s]hall set forth the specific grounds on which the applicant considers the decision and order to be erroneous or unlawful" according to 14 DCMR § 3823.2, and that the denial of a motion for reconsideration "will result from a party's failure to set forth such specific grounds of error or illegality in the Commission's decision."); Tenants of 5112 MacArthur Blvd., N.W. v. 5112 MacArthur L.P., CI 20,791 (RHC July 2, 2004) (denying tenant motion for reconsideration pursuant to 14 DCMR § 3823.2 for its failure to state specific grounds of error, illegality or lack of compliance with the Act); Stone v. Keller, TP 27,033 (Mar. 24, 2009) (denying motion for reconsideration where tenant failed to set forth a specific ground of error or illegality in the Commission's decision).

³ 14 DCMR § 3823.1 provides the following:

Any party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision; provided, that an order issued on reconsideration is not subject to reconsideration.

The Petitioners' Emergency Motion requests that the Commission re-open case RH-TP-08-29,302, primarily to allow consideration by the Commission of the Petitioners' Opposition to Motion to Dismiss as referenced in Petitioners' Motion to File Late an Opposition to Appellant's Motion to Dismiss. (Motion for Late Filing) Emergency Motion at 1. Based upon its review of the Emergency Motion, the Commission determines that the Petitioners have failed to identify any grounds on which the decision in the order was erroneous or unlawful under the Act or its regulations. *See., e.g., Byrd*, TP 26,195; Dorchester House, Assocs., LLC, RH-SF-09-20,098; Tenants of 5112 MacArthur Blvd., N.W., CI 20,791; Stone, TP 27,033. The Commission thus denies the Emergency Motion for its failure to comply with 14 DCMR § 3823.2. *See., e.g., Byrd*, TP 26,195; Dorchester House, Assocs., LLC, RH-SF-09-20,098; Tenants of 5112 MacArthur Blvd., N.W., CI 20,791; Stone, TP 27,033.

Regarding the Petitioners' Motion for Late Filing, 14 DCMR § 3814.3 (2004) states as follows: "Any party may file a response in opposition to a motion within five (5) days after service of the motion." Under 14 DCMR § 3816.5 (2004), if a party files documents by mail, three (3) additional days are added to the timeframe to file.⁴ The Housing Provider filed its Motion to Dismiss Appeal on April 1, 2014. The Petitioners' Motion for Late Filing was filed May 15, 2014, over a month beyond the time allowed by the Commission's rules.⁵ The Petitioners base their Motion for Late Filing on a claim that their attorney of record, Mr. Zouaoui, declined to represent them with respect to the Notice of Appeal filed by the Housing Provider on July 9, 2013, (*see supra* at 2), for which the Commission issued its Order Dismissing Appeal on May 8,

⁴ 14 DCMR § 3816.5 provides as follows: "If a party is required to serve papers within a prescribed period and does so by mail, three (3) days shall be added to the prescribed period to permit reasonable time for mail delivery."

⁵ The Petitioners note that they did not directly receive a copy of the Housing Provider's Motion to Dismiss Appeal but acknowledged that they believe their attorney of record received the motion. Motion for Late Filing at 1.

2014. According to the record in this case, Mr. Zouaoui has served as the Petitioners' attorney since July 15, 2009. *See* Praeceptum for Entry of Appearance at 1-2, R. at 204-05. No formal notice of a change in representation has been filed with the Commission. The Petitioners May 15, 2014, Motion for Late Filing is the first time the Commission has received any information on a possible difference in representation for the Petitioners in this case. Motion for Late Filing at 1. Ms. Chaney filed the Motion for Late Filing on behalf of the Petitioners and has listed herself as Pro Se for representation purposes. Motion for Late Filing at 2.

The Commission's review of the record reveals that it has received neither a written motion from Mr. Zouaoui either to file a motion to appear as counsel for the Petitioners on appeal nor a written motion to withdraw from his representation of the Petitioners in this appeal – as both are required under the Commission's regulations. *See* 14 DCMR §§ 3812.6, 3813.1 (2004).⁶ *See e.g., Wedderburn v. Thomas*, TP 23,970 (RHC June 10, 1996) (ordering an attorney to file a notice of appearance in accordance with 14 DCMR § 3812.6 in order to represent client); *Dismer Auxier Realty v. Tenants of 5922 13th St., N.W.*, TP 20,364 (RHC Dec. 10, 1993) (requiring tenant association to select a representative who was required to file for appearance pursuant to 14 DCMR § 3812.6); *1460 Irving Street Tenants Assoc. v. 1460 Irving St., L.P.*, CIs 20,760-763 (RHC Sept. 17, 2003) (stating the requirements for counsel to withdraw from an appeal by filing a motion under 14 DCMR § 3813.1-4); *Mersha v. Marina View Tower Apts.*, TP 24,302 (RHC May 26, 2000) (concluding that, where attorney did not participate in the

⁶ 14 DCMR § 3812.6 provides as follows:

Any individual who wishes to appear in a representative capacity before the Commission shall file a written notice of appearance stating the individual's name, local address, telephone number, District of Columbia Bar registration number, if applicable, and for whom the appearance is made.

14 DCMR § 3813.1 provides as follows: "If an attorney or other person representing a party wishes to withdraw from a case pending before the Commission, a written motion for application to withdraw shall be filed.

appeal on behalf of the tenant but did not submit an application to withdraw, the Commission served him as the attorney of record); Salisbury Prop. Co. v. Sargisson, TP 22,187 (RHC Sept. 30, 1994) (noting that the attorney had a duty under 14 DCMR § 3813 to file a motion to withdraw; in absence of the motion the housing provider and the Commission served the attorney under Commission regulations 14 DCMR §§ 3802.4, 3802.3 & 3803.7 (2004)).

In the absence in the record of evidence of Mr. Zouaoui's compliance with 14 DCMR §§ 3812.6 and 3813.1, the Commission concludes that, for purposes of delivery and receipt of service of documents by a representative of the Petitioners with respect to the Housing Provider's Motion to Dismiss Appeal and the Commission's Order Dismissing Appeal, Mr. Zouaoui continued to serve as the representative of the Petitioners. *See* 14 DCMR §§ 3803.1, 3803.2 (2004).⁷ *See, e.g.,* Wedderburn, TP 23,970; Dismer Auxier Realty, TP 20,364; 1460 Irving Street Tenants Assoc., CIs 20,760-763; Mersha, TP 24,302. The Commission's review of the record indicates that the Certificate of Service of the Housing Provider's timely Motion to Dismiss Appeal correctly listed Mr. Zouaoui at an appropriate address of record and was not returned as undeliverable. *See* Housing Provider's Motion to Dismiss Appeal at 2. Furthermore, the Commission's review of the record indicates that the Certificate of Service on the Commission's Order Dismissing Appeal correctly listed Mr. Zouaoui at an appropriate address of record and was not returned as undeliverable. *See* Order Dismissing Appeal at 7. The Commission therefore denies the Petitioners' Motion for Late Filing.

⁷ 14 DCMR § 3803.1 states as follows: "All pleading and other documents required to be served upon any party under this chapter shall be served upon that party or shall be served upon the representative designated by that party as provided in § 3812 or by law to receive service of documents."

14 DCMR § 3803.2 states as follows: "When a party has a representative of record as provided in § 3812, service shall be made upon the representative."

Regarding the Petitioners' motion to file a Cross Appeal, the Act requires a notice of appeal to be filed "within ten (10) days after a final decision" by OAH under 14 DCMR §3802.2 (2004).⁸ Moreover, 14 DCMR § 3802.6 (2004) provides as follows: "Any party upon whom a notice of appeal has been served may file an answer with the Commission within ten (10) days of service and shall serve a copy on the other parties." The Commission's review of the record indicates that the Petitioners did not file a cross appeal within the time limits of either 14 DCMR § 3802.2 or 14 DCMR § 3802.6, even though the Petitioners reveal their awareness of the Housing Provider's filing of its Notice to Appeal. *See* Motion for Late Filing at 1. For their failure to comply with 14 DCMR §§ 3802.2 and 3802.6, the Commission denies the Petitioners' request to file a cross appeal.⁹

The decisions in this Order denying the Petitioners' Emergency Motion, the Motion for Late Filing, Request to File Cross Appeal and other motions, address the issues raised in the Housing Provider's Motion to Strike: Mr. Zouaoui is still the attorney of record for the Petitioners, Ms. Chaney cannot represent the Petitioners, the Petitioners cannot file an appeal at this time, and Ms. Chaney does not identify any reason why reconsideration is appropriate and the Housing Provider's Motion to Dismiss Appeal should be denied. Therefore, the issues in the Housing Provider's Motion to Strike will not be separately addressed.

III. CONCLUSION

⁸ 14 DCMR § 3802.2 provides the following: "A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator is issued; and, if the decision is served on the parties by mail, an additional three (3) days shall be allowed."

⁹ The Petitioners also request that the Commission issue a temporary restraining order for largely unspecified purposes. *See* Emergency Motion at 2. Neither the Act nor the Commission's regulations permit the Commission to issue such orders. *See* D.C. OFFICIAL CODE §§ 42-3501.01 - 42-3509.07; 14 DCMR §§ 3800-4399.

For the foregoing reasons, the Commission denies the Emergency Motion, the Motion for Late Filing, Request to File Cross Appeal and other motions or requested relief referenced herein.

SO ORDERED


PETER SZEGEDY-MASZAK, CHAIRMAN


CLAUDIA L. MCKOIN, COMMISSIONER

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), “[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals.” Petitions for review of the Commission’s decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

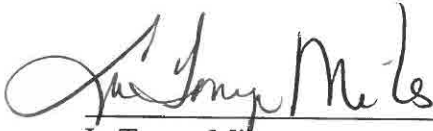
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **RE-ISSUED ORDER ON MOTION FOR RECONSIDERATION** in RH-TP-08-29,302 was mailed, postage prepaid, by first class U.S. mail on this **27th day of June 2014** to:

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